had repudiated the trusteeship, or refused to act, by making an application to the Syonan Kotohoin, and by accepting the order made therein and now sought to be set aside.

On the death of Somah Basapah on 28th November, 1943, Thomas Augustine Basapah and his brother issued an originating summons, in doing which they were anticipated by Lakshmi Naidu, the beneficiary before referred to as opposing. It is not clear that the former was issued in reply to the latter. Action was certainly first taken against them. In their affidavit in support they state that "By reason of the death of the said William Lawrence Soma Basapah also known as Somah Basapah, there is now no one who is competent to receive the rents and profits of the said immoveable properties and to manage and supervise the estate of the testator. There is danger that the said immoveable properties may be wasted through the tenants refusing to pay up the arrears of rents or absconding and also through the said immoveable properties falling into a state of disrepair." In fact this statement was true as on the date of the affidavit 9th December, 1943, there were no personal representatives of Somah Basapah. Thomas Augustine Basapah and his stepmother were appointed on 11th December, 1943. They appear to have been assisted by lawyers, but it is impossible on a perusal of these proceedings not to conclude that Thomas Augustine Basapah, at least, was totally unaware of his rights. These originating summonses were consolidated with the administration action. In an affidavit sworn on 16th December, 1943, and filed next day by Mr. Ess, apparently as Registrar, although in the last paragraph he speaks of "my solicitor", in paragraph 7 he swears: "there is no trustee to look after the management of the estate and to execute the trusts....." The order of 21st February, 1944, no where calls on the trustees to convey or regards them as divested although the estate had vested in them by virtue of section 35 of Cap. 118. There could be no repudiation by Thomas Augustine Basapah of trusteeship, for the whole purpose of his originating summons was to obtain his appointment thereto. Nor could such act divest his estate. Nor was there repudiation by the widow, who does not seem to have been a party to any proceedings, though she filed an affidavit in that by Lakshmi.

There can be no waiver of a right of which the person said to waive has no knowledge, and which none concerned contemplates. Nor can there, properly, be said to be any acquiescence in the order of 17th January. Dr. Withers-Payne for applicants says that an appeal was attempted, or started, there is no record of this for there was, at that time, no Court of Appeal, nor alternative to "acquiescence." It was precisely to rectify errors made in the administration of justice in such ways and circumstances that the ordinance was passed. I can see nothing in the objection to the application. If the orders be set aside, the applicants must be vested with the estates as trustees until other appointments be made, and the estates transferred to the new trustees.

Order made by Japanese Court set aside.

S. A. T. ALSAGOFF v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.)
August 2, 1950]
[Singapore — Magistrate's Appeals Nos. 94, 95, 96 and 97 of 1950]

Municipal Ordinance (Cap. 133), ss. 3 and 144 — Carrying out of building operations — Liability of owner — Definition of "owner" — Mandatory order.

In this case the appellant appealed against his conviction under section 144 (7) of the Municipal Ordinance. It appeared that the houses had been built by squatters on the appellant's land.

Held, (1) that there was no evidence to show that the appellant was the "owner" of the buildings concerned, within the meaning of the definition of "owner" in section 3 of the Municipal Ordinance and therefore there was no evidence that he was liable under section 144 of the ordinance; (2) that before a mandatory order can be made the procedure laid out in section 255 of the Municipal Ordinance must be followed and as this was not done in this case and as there was no evidence that the appellant was the person liable under section 144 of the ordinance, the appeals must be allowed.

MAGISTRATE'S APPEALS.

Mark Morrison for the appellant.

A. H. Simpson (D.P.P.) for the Crown.

Murray-Aynsley, C.J. : — In this case there were four charges against section 144(7) of the Municipal Ordinance.

The appellant was fined $20 in each case and mandatory orders were made.

The appellant claimed trial.

In various respects the trials were unsatisfactory. Firstly the Court does not seem to have had regard to the definition in section 3 of owner. This definition does not seem to be excluded by the context and it is exclusive of any other meaning of the word. There does not seem to have been any evidence that the appellant was "owner" within this definition. I do not agree with Mr. Walters on this point.

Further a mandatory order cannot be made in any case unless the procedure set out in section 255 is followed. It was not done in this case.

For these reasons the appeals must be allowed.

A further point which I do not decide is whether sub-section 12 applies to the case of a wholly new building. Mr. Walters in his Commentary thought not.

Appeals allowed.